IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.583/2004

Reserved on.31.8.2007

Decided on.5.10.2007

Prem Chand Premi and another. **…Petitioners.**

Versus

Bharat Sanchar Nigam Ltd. & others. **…Respondents**

Coram

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?[1]*. no.*

For the petitioners : Mr. K.D. Sood, Advocate.

For the respondents Mr. Ashok Sharma, Advocate.

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that the petitioner No.1 was appointed as Technician on 11th September, 1995 and the petitioner No.2 was appointed as Technician on 18th June, 1996. They were promoted as Telecom Technical Assistants (hereinafter referred to as the 'TTA' for brevity sake) on 15.3.1999. The post of TTA was in feeder category for promotion to the post of Junior Telecom Officer (JTO) as per the Rules called "The Junior Telecom Officer Recruitment Rules, 1996" framed under Article 309 of the Constitution of India and notified on 8th February, 1996. It is evident from the combined reading of the rules notified on 8th February, 1996 that the post of JTO is required to be filled up 50% by direct recruitment through a competitive examination in accordance with the instructions issued by the Department in this behalf and remaining 50% by promotion/transfer as per parameters indicated

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

under column 12 of the Schedule. There is further bifurcation of 50%. It has to be filled up by way of promotion/transfer i.e. 15% by promotion from Departmental candidates through a competitive examination and 35% by promotion from Transmission Assistants, Telephone Inspectors, Auto Exchange Assistants/Phone Inspectors/Teleco. Technical Assistant. There is further bifurcation of 35% which is to be filled up by transfer/promotion which read thus:

> **"35% transfer/promotion from amongst-**
>
> **(a) the Phone Inspectors/Auto Exchange Assistants/Transmission Assistant/Wireless Operator who possess the qualification prescribed in column 8 and have completed 5 years regular service in the cadre of Phone Inspector/Auto Exchange Assistant/Transmission Assistant/Wireless Operator.**
>
> **(b) The Phone Inspectors/Auto Exchange Assistant/Wireless Operators/Transmission Assistant/ Telecom. Technical Assistants who possess the high school/matriculation qualification and who have completed 6 years of regular service through a qualifying screening test, unless he has already passed such test,**
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> **Note:**
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> **The shall have to undergo a simple medical test to ensure that they are physically fit and mentally alert to perform the duties expected of a Junior Telecom Officer.**
>
> **Explanation:**
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> **Length of service in the cadre of Phone Inspector/Auto Exchange Assistant Transmission Assistant/Wireless Operator will be the criteria for sending them for JTOs training."**

An amendment was carried out in the year 1996 in the Junior Telecom Officer Recruitment Rules, 1996 by way of the Junior Telecom Officer Recruitment (Amendment) Rules, 1996 whereby in the Schedule to the Department of Telecommunications Junior Telecom Officer

Recruitment Rules, 1996 for the entry in the explanation under column 12, the following entry was substituted:

> **"Length of service in the cadre of Phone Inspector/Auto Exchange Assistant/Transmission Assistant/Wireless Operator/Telecom Technical Assistant will be the criteria for sending them for JTOs training."**

The Junior Telecom Officer Recruitment Rules, 1996 were repealed by the rules called "The Junior Telecom Officer Recruitment Rules, 1999". The method of recruitment as per Rules, 1999 remained 50% by direct recruitment and 50% by promotion through limited departmental competitive examination from the categories as mentioned in column 12 which reads thus:

> **"By Promotion: 50% by promotion of departmental candidates referred to in item (ii) in column 11 will be regulated as follows:-**
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> **1. 35% by promotion through limited departmental competitive examination from amongst following Group 'C' employees, below 50 years of age as on the date of such examination, of the Engineering Wing, namely:-**
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> **(i) Phone Inspectors (FIs)**
> **(ii) Auto Exchange Assistants (AEAs)**
> **(iii) Wireless Operators (WOs)**
> **(iv) Transmission Assistants (TAs)**
> **(v) Telecom Technical Assistants (TTAs)**
> **(vi) Sr. Telecom Office Assistants**
>
> **and possessing the following essential qualifications and experience:-**
>
> **(i) Bachelor of Engineering in Telecom/Electronics/Computer Engineering/ Radio Engg./Electrical Engg. Or equivalent**
>
> **OR**
>
> **(ii) Bachelor of Science with Physics and Chemistry**
>
> **OR**

(iii) 3 years Diploma in Electronics/Radio/Computer Engg. Instrument Technology/Telecom, and

(iv) 10 years regular service in posts in Group 'C'.

The petitioners were permitted to sit in the screening test of departmental examination conducted by the respondents for filling up the posts under 35% quota. It appears that the candidates similarly situated who were not permitted to sit in the examination had approached the Central Administrative Tribunal, Chandigarh Bench by way filing original application bearing No. 478/HP/99. The learned Central Administrative Tribunal had permitted the candidates to participate in the screening test against 35% quota fixed for 25.4.2000 for promotion to the post of JTO on provisional basis. The petitioners sat in the screening test and had qualified the same as is evident from the Annexure P-5. The petitioner No.1 is at Sr. No. 39 and the petitioner No.2 is at Sr. No. 38 in the merit list. In the meantime, the Bharat Sanchar Nigam Limited was constituted under the Companies Act wholly owned and controlled by the Central Government. The assets and liabilities of the Telecom Department of the Government of India were transferred to the Bharat Sanchar Nigam Limited. All the Officers/employees working in the Department of Communication were transferred and observed in the Bharat Sanchar Nigam Limited. The Bharat Sanchar Nigam Limited has framed the rules called "The Junior Telecom Officers Recruitment Rules, 2001" which have come into force with effect from 26th September, 2001. The mode for filling up the post of JTO remained the same as per the Junior Telecom Officer Recruitment Rules, 2001 i.e. 50% by direct recruitment and 50% through limited departmental competitive examination of the Bharat Sanchar Nigam Limited. The 50% by promotion of internal candidates as per the Junior Telecom Officers Recruitment Rules, 2001 is to be regulated in the following manner:

"50% by promotion of internal candidates referred to in item (ii) in column 11 will be regulated as follows:

(I) 35% by promotion through limited internal competitive examination from amongst following group 'C' employees, below 50 years of age as on the date of such examination, of the Engineer Wing namely:-

Phone Inspector/Auto Exchange Assistants/Wireless Operators/Transmission Assistants/Telecom Technical Assistants/Sr. Telecom Office Assistants and possessing the following essential qualifications and experience:-

A). i) Bachelor of Engineering-Bachelor of Technology or equivalent Engineering Degree in any of the discipline viz. Telecommunications/Electronics/Electrical/Radio/Computer.

Or Bachelor of Science with Physics and Mathematics.

Or 3 years Diploma in Telecom/ Electronics/ Electrical/ Radio/ Computer and;

B) ii) 19 years' regular service in post in Group 'C'."

Mr. K.D. sood, Advocate had strenuously argued that the petitioners have been permitted to sit in the screening test on the basis of the orders passed by the learned Central Administrative Tribunal and consequently the respondents were bound to send them for training for the post of JTO. Mr. Sood also contended that the cut off date prescribed by the respondents i.e. 31.8.1999 is arbitrary and has no nexus sought to be achieved. He further contended that the management of the BSNL had decided to divert the posts from direct quota to promotional quota and the petitioners were bound to be sent for training after the diversion of posts.

Mr. Ashok Sharma, Advocate had strongly contended that the petitioners had not put in six years regular service as on 31.8.1999 and as such they could not be sent for training though they might have passed the screening test as per Annexure P-5.

I have heard the learned counsel for the parties and perused the record.

It is evident from the facts mentioned hereinabove that initially the promotion of the petitioners was to be from the post of TTA to JTO as per the Junior Telecom Officers Recruitment Rules, 1996 notified on 8th February, 1996. There was only one amendment carried out on 15th October, 1996 whereby column No. 12 of the Schedule was substituted and thereafter new rules were promulgated on 31st August, 1999. Thereafter the promotion to the post of JTO was to be regulated as per the rules notified on 26th September, 2001. The Central Administrative Tribunal Principal Bench at Delhi in O.A. No. 193/99 has held as under:

> **"It is difficult to accept this argument of respondents. The JTO Recruitment Rules, 1996 have been issued in accordance with Article 309 of the Constitution and we have to go by the words used in the rules. While (i) above does talk of PI/AEA/TA/WO who posses the qualification of BE/B.Tech./B.Sc. and who have completed 5 years regular service in the cadre of PI/AEA/TA/WO (emphasis supplied) being eligible under the 35% promotion/transfer quota, (ii) above, makes PI/AEA/WO/TA/TTA having matric/High School qualification with a minimum of six years regular service eligible for being called for qualifying screening test under the 35% promotion/transfer quota. Under (ii) above there is nothing that requires such PI/AEA/WO/TA/TTA who possess High School/Matric qualification to have put in a minimum of 6 years' regular service as PI/AEA/WO/TA/TTA (emphasis supplied) before they require eligibility to be called for qualifying screening test. As per (ii) above, it is sufficient if the PI/AEA/TA/WO/TTA who possess the High School/Matric qualification to have completed 6 years' regular service (which may not necessarily be a P.I./AEA/WO/TA/TTA) to be called for the qualifying screening test.**

In the result, this OA is disposed of with a direction to respondents to call such of those applicants for the qualifying screening test who are TTAs with High School/Matric qualification and who have completed 6 years' regular service, which may not necessarily be as PI/AEA/WO/TA/TTA. No costs."

The respondents had assailed the order of the Central Administrative Tribunal dated 19th August, 1999 by filing CWP No. 1071/1999 before the High Court of Delhi which was subsequently withdrawn and a uniform decision as per the reply filed to the writ petition by the respondents was taken to count the entire service instead of confining it to the cadre from which the promotion was to be effected. The Assistant Director General had sent the communication dated 10th November, 1999 to all the Heads of Telecom Circles/Telecom Districts under the subject 'eligibility condition to appear in JTO qualifying screening test'. The entire text being relevant reads thus:

"In continuation of this office letter of even number dated 12th March 1999, I am directed to state that the vacancies of JTO upto 31st August 1999 will be filled up as per the JTO Recruitment Rules 1996 and the vacancies after 31st August 1999 will be filled up according to the provisions of JTO Recruitment Rules 1999.

In view of this it has been decided that all eligible candidates upto 31.8.1999 under 35% quota may be permitted to appear in J.T.O. screening test to be held shortly. The case regarding permitting TTAs has also been examined and it has been decided that all the TTAs as on 31st August 1999 be permitted provisionally to appear in 35% qualifying screening test without insisting 6 years of service in the cadre of TTA subject to the outcome of the OAs pending in different CATs.

All the eligible candidates of 35% JTO screening test may be informed clearly that qualified officials of 35% JTO screening test will be send on training only to the extent of vacancies available under 35% quota upto 31.8.1999.

Remaining qualified ofificials will have no claim whatsoever for training/appointment as JTO."

The Board of Directors of the Bharat Sanchar Nigam Limited had taken a policy decision of conversion of posts of direct recruitment quota for JTOs for one time promotion of the TTAs which reads thus:

"TO CONSIDER DIVERSION OF POST OF DIRECT RECRUIT QUOTA OF JTOs FOR ONE TIME PROMOTION OF THE TTAs.
The proposal of the HRD Group for diversion of 736 posts from Direct Recruit Quota of JTOs for filling up the posts in the tenure circle by training and promoting the TTAs who have qualified in the screening test against the 35% Departmental Quota was discussed. After discussion, the Board decided to approve the training and subsequent recruitment as JTOs of all the TTA's who have qualified in the screening test but can not be sent for training due to non-availability of vacancies in the Departmental Quota. This would be done @ 500 posts per year by diversion from Direct Recruit Quota. The guidelines for select of the TTAs to be sent each year for training would be finalized and issued by the Personnel Cell.
This is for your reference and necessary action. The action taken and follow up report may please be furnished for information of the Board."

According to their own case the petitioners were permitted to appear in the screening test conducted by the respondents for filling up the posts of JTO on the basis of letter dated 10th November, 1999. The text of the letter has already been reproduced in the preceding paras for reference. According to communication dated 10th November, 1999, entire vacancies of JTOs upto 31st August, 1999 were to be filled in as per the Junior Telecom Officer Recruitment Rules, 1996 and the vacancies becoming available after 31st August, 1999 were to be filled in according to the provisions of the Junior Telecom Officer Recruitment Rules, 1999. All

the TTAs as per letter dated 10th November, 1999 were permitted to appear in the qualifying screening test provisionally. They sat in the examination held on 25th April, 2000 and their names figure at Sr. No. 38 and 39 respectively as per Annexure P-5 dated 18.4.2001. It is clear from the plain reading of the Junior Telecom Officer Recruitment Rules, 1996 as notified on 8th February, 1996 that TTAs were required to put in six years regular service. The petitioners were appointed on 11.9.1995 and 18.6.1996 respectively and were promoted as Telecom Technical Assistants on 15.3.1999. They had completed only about two years of service as Telecom Technical Assistants and if their entire length of service is taken with effect from 1995 and 1996 respectively, they could become eligible in the year 2001 and 2002. It is thus evident that the petitioners were not eligible to appear in the screening test as per the existing rules notified on 8th February, 1996. Accordingly the submission of Mr. K.D. Sood that the petitioners were eligible as per the Junior Telecom Officer Recruitment Rules, 1996 is rejected.

The Ministry of Communication had issued rules called “The Junior Telecom Officer Recruitment Rules, 1999”, which were duly notified on 31st August, 1999 whereby the earlier rules were superseded. The minimum length of service required for the candidates placed in group ‘C’ was ten years for promotion to the post of JTO. The petitioners had not completed ten years of service since they were appointed in the year 1995 and 1996 respectively. The same position is reiterated in the rules, which were framed by the Bharat Sanchar Nigam Limited on 26th September, 2001 whereby ten years qualifying service is necessary for being considered for promotion to the post of JTO under 35% quota. The petitioners in fact had completed ten years of qualifying service as per the

rules notified on 26th September, 2001 only in the year 2005 and 2006 respectively.

Mr. K.D. Sood, submitted that in the meeting of the Board of Directors held on 30th March, 2001, a decision has been taken to divert the posts from the direct recruit quota to departmental promotion quota that too against the 35% quota and vacancies are still available with the respondents against which the petitioners can be sent for training. Mr. Ashok Sharma had submitted that vide letter dated 10th August, 2001 only 8 vacancies were allotted to the State of Himachal Pradesh after diversion of 500 posts of JTOs from the direct recruit quota to departmental promotion quota in the year 2003, 12 vacancies of Junior Telecom Officers had been allotted to the State of Himachal Pradesh in the year 2004 and against these vacancies eligible persons were sent for training. It has also come in the supplementary affidavit filed by Mr. Ashok Sharma that 11,300 vacancies of direct recruitment quota of JTOs were lying vacant prior to the formation of Bharat Sanchar Nigam Limited and despite these vacancies being advertised, the same could not be filled in as a whole except that 2800 candidates joined the Corporation in the year 2001 and 2600 in the year 2002 and in the year 2005 only 2652 candidates have qualified against 3000 vacancies advertised. In all according to Mr. Ashok Sharma, 2500 posts of JTOs from direct recruit quota have been diverted till the date of filing of the supplementary affidavit.

The upshot of the above discussion is that:

i. **the petitioners were not eligible for being promoted to the post of JTO from the feeder category of TTA since they had not put in six years of service as per the Junior Telecom Officer Recruitment Rules, 1996 notified on 8th February, 1996;**

ii. **the petitioners were also not eligible as per the Junior Telecom Officer Recruitment Rules, 1999 notified on 31st August, 1999;**

iii. **the petitioners have now become eligible since they have completed ten years of regular service in group 'C' as per the Junior Telecom Officer Recruitment Rules, 2001 notified on 26th September, 2001;**

iv. **the petitioners have qualified the screening test though they were permitted to appear provisionally as per the result declared on 18th April, 2001 and are entitled to be sent for the training of JTO if the vacancies are available in 35% quota.**

Accordingly the writ petition is disposed of in view of the observations made hereinabove with the directions to the respondents to send the petitioners for training of JTO on the basis of their qualifying the screening test held on 25th April, 2001 since they have now acquired ten years qualifying service. There shall be no order as to costs.

(Rajiv Sharma), Judge

October 5, 2007
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